

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2063

Introduced by Assembly Member Chávez

February 20, 2014

An act to amend ~~Section 511~~ Sections 2054, 2055, 2056, 2057, and 2061 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2063, as amended, Chávez. Employment: ~~wages and hours: alternative workweek schedules: car washes: online registration.~~

Existing law regulates the employment practices of car washes, including providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions, under the enforcement authority of the Division of Labor Standards and Enforcement. Existing law also requires employers of car washers to post a surety bond, to register with the Labor Commissioner, and pay a specified registration fee as well as an annual fee, or be subject to a specified civil fine.

This bill would authorize employers to submit their application for registration, fees, and supporting documentation online and would require the Labor Commissioner to develop and provide a form and procedure for online registration.

~~Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by an affirmative vote of at least $\frac{2}{3}$ of affected employees in a work unit of alternative workweek schedules providing~~

~~for workdays no longer than 10 hours within a 40-hour workweek without the payment to those employees of overtime wages.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2054 of the Labor Code is amended to*
2 *read:*

3 2054. (a) Every employer shall register with the commissioner
4 annually.

5 (b) *The application may be made by mail or online.*

6 (c) *The commissioner shall develop and provide a registration*
7 *form that may be completed online and provide for the payment*
8 *of registration fees electronically on the Internet Web site of the*
9 *Department of Industrial Relations.*

10 *SEC. 2. Section 2055 of the Labor Code is amended to read:*

11 2055. The commissioner may not permit any employer to
12 register, nor may the commissioner permit any employer to renew
13 registration until all of the following conditions are satisfied:

14 (a) The employer has applied for registration to the
15 commissioner by presenting proof of compliance with the local
16 government's business licensing or regional regulatory
17 requirements.

18 (b) The employer has obtained a surety bond issued by a surety
19 company admitted to do business in this state. The principal sum
20 of the bond shall be not less than one hundred fifty thousand dollars
21 (\$150,000). The employer shall file a copy of the bond with the
22 commissioner. *A copy of the bond required by this section may be*
23 *filed electronically when the registration is submitted online*
24 *pursuant to Section 2054.*

25 (1) The bond required by this section shall be in favor of, and
26 payable to the people of the State of California and shall be for
27 the benefit of any employee damaged by his or her employer's
28 failure to pay wages, interest on wages, or fringe benefits, or
29 damaged by violation of Section 351 or 353.

30 (2) Thirty days prior to the cancellation or termination of any
31 surety bond required by this section, the surety shall send written

1 notice to both the employer and the commissioner, identifying the
2 bond and the date of the cancellation or termination.

3 (3) An employer may not conduct any business until the
4 employer obtains a new surety bond and files a copy of it with the
5 commissioner.

6 (4) This subdivision shall not apply to an employer covered by
7 a valid collective bargaining agreement, if the agreement expressly
8 provides for all of the following:

9 (A) Wages.

10 (B) Hours of work.

11 (C) Working conditions.

12 (D) An expeditious process to resolve disputes concerning
13 nonpayment of wages.

14 (c) The employer has documented that a current workers'
15 compensation insurance policy is in effect for the employees. *A*
16 *copy of the insurance policy may be filed electronically when the*
17 *registration is submitted online pursuant to Section 2054.*

18 (d) The employer has paid the fees established pursuant to
19 Section 2059. *Fees may be paid electronically when the*
20 *registration is submitted online pursuant to Section 2054.*

21 *SEC. 3. Section 2056 of the Labor Code is amended to read:*

22 2056. (a) When a certificate of registration is originally issued
23 or renewed under this chapter, the commissioner shall provide
24 related and supplemental information to the registrant regarding
25 business administration and applicable labor laws.

26 (b) *If the employer submits the registration online, the*
27 *commissioner may provide the information in subdivision (a) to*
28 *the employer electronically.*

29 *SEC. 4. Section 2057 of the Labor Code is amended to read:*

30 2057. Proof of registration shall be by an official Division of
31 Labor Standards Enforcement registration form. *The proof of*
32 *registration shall also be available in a form that may be printed*
33 *from the Internet Web site of the Department of Industrial*
34 *Relations.* Each employer shall post the registration form where
35 it may be read by the employees during the workday.

36 *SEC. 5. Section 2061 of the Labor Code is amended to read:*

37 2061. The commissioner may not approve the registration of
38 any employer until all of the following conditions are satisfied:

- 1 (a) The employer has executed a written *or online* application,
2 in a form prescribed by the commissioner, subscribed, and sworn
3 by the employer containing the following:
- 4 (1) The name of the business entity and, if applicable, its
5 fictitious or “doing business as” name.
- 6 (2) The form of the business entity and, if a corporation, all of
7 the following:
- 8 (A) The date of incorporation.
- 9 (B) The state in which incorporated.
- 10 (C) If a foreign corporation, the date the articles of incorporation
11 were filed with the California Secretary of State.
- 12 (D) Whether the corporation is in good standing with the
13 Secretary of State.
- 14 (3) The federal employer identification number (FEIN) and the
15 state employer identification number (SEIN) of the business.
- 16 (4) The business’ address and telephone number and, if
17 applicable, the addresses and telephone numbers of any branch
18 locations.
- 19 (5) Whether the application is for a new or renewal registration
20 and, if the application is for a renewal, the prior registration
21 number.
- 22 (6) The names, residential addresses, telephone numbers, and
23 Social Security numbers of the following persons:
- 24 (A) All corporate officers, if the business entity is a corporation.
- 25 (B) All persons exercising management responsibility in the
26 applicant’s office, regardless of form of business entity.
- 27 (C) All persons, except bona fide employees on regular salaries,
28 who have a financial interest of 10 percent or more in the business,
29 regardless of the form of business entity, and the actual percent
30 owned by each of those persons.
- 31 (7) The policy number, effective date, expiration date, and name
32 and address of the carrier of the applicant business’ current
33 workers’ compensation coverage.
- 34 (8) Whether any persons named in response to subparagraphs
35 (A), (B), or (C) of subparagraph (6) of this section presently:
- 36 (A) Owe any unpaid wages.
- 37 (B) Have unpaid judgments outstanding.
- 38 (C) Have any liens or suits pending in court against himself or
39 herself.

1 (D) Owe payroll taxes, or personal, partnership, or corporate
2 income taxes, Social Security taxes, or disability insurance.

3 An applicant who answers affirmatively to any item described
4 in paragraph (8) shall provide, as part of the application, additional
5 information on the unpaid amounts, including the name and address
6 of the party owed, the amount owed, and any existing payment
7 arrangements.

8 (9) Whether any persons named in response to subparagraphs
9 (A), (B), or (C) of paragraph (6) of this section have ever been
10 cited or assessed any penalty for violating any provision of the
11 Labor Code.

12 An applicant who answers affirmatively to any item described
13 in paragraph (9) shall provide additional information, as part of
14 the application, on the date, nature of citation, amount of penalties
15 assessed for each citation, and the disposition of the citation, if
16 any. The application shall describe any appeal filed. If the citation
17 was not appealed, or if it was upheld on appeal, the applicant shall
18 state whether the penalty assessment was paid.

19 (b) The employer has paid a registration fee to the commissioner
20 pursuant to subdivision (d) of Section 2055.

21 ~~SECTION 1. Section 511 of the Labor Code is amended to~~
22 ~~read:~~

23 ~~511. (a) Upon the proposal of an employer, the employees of~~
24 ~~that employer may adopt a regularly scheduled alternative~~
25 ~~workweek that authorizes work by the affected employees for no~~
26 ~~longer than 10 hours per day within a 40-hour workweek without~~
27 ~~the payment to the affected employees of an overtime rate of~~
28 ~~compensation pursuant to this section. A proposal to adopt an~~
29 ~~alternative workweek schedule shall be deemed adopted only if it~~
30 ~~receives approval in a secret ballot election by at least two-thirds~~
31 ~~of affected employees in a readily identifiable work unit. The~~
32 ~~regularly scheduled alternative workweek proposed by an employer~~
33 ~~for adoption by employees may be a single work schedule that~~
34 ~~would become the standard schedule for workers in the work unit,~~
35 ~~or a menu of work schedule options, from which each employee~~
36 ~~in the unit would be entitled to choose. Notwithstanding~~
37 ~~subdivision (c) of Section 500, the menu of work schedule options~~
38 ~~may include a regular schedule of eight-hour days that are~~
39 ~~compensated in accordance with subdivision (a) of Section 510.~~
40 ~~Employees who adopt a menu of work schedule options may, with~~

1 employer consent, move from one schedule option to another on
2 a weekly basis.

3 ~~(b) An affected employee working longer than eight hours but~~
4 ~~not more than 12 hours in a day pursuant to an alternative~~
5 ~~workweek schedule adopted pursuant to this section shall be paid~~
6 ~~an overtime rate of compensation of no less than one and one-half~~
7 ~~times the regular rate of pay of the employee for any work in excess~~
8 ~~of the regularly scheduled hours established by the alternative~~
9 ~~workweek agreement and for any work in excess of 40 hours per~~
10 ~~week. An overtime rate of compensation of no less than double~~
11 ~~the regular rate of pay of the employee shall be paid for any work~~
12 ~~in excess of 12 hours per day and for any work in excess of eight~~
13 ~~hours on those days worked beyond the regularly scheduled~~
14 ~~workdays established by the alternative workweek agreement.~~
15 ~~Nothing in this section requires an employer to combine more than~~
16 ~~one rate of overtime compensation in order to calculate the amount~~
17 ~~to be paid to an employee for any hour of overtime work.~~

18 ~~(c) An employer shall not reduce an employee's regular rate of~~
19 ~~hourly pay as a result of the adoption, repeal, or nullification of~~
20 ~~an alternative workweek schedule.~~

21 ~~(d) An employer shall make a reasonable effort to find a work~~
22 ~~schedule not to exceed eight hours in a workday, in order to~~
23 ~~accommodate any affected employee who was eligible to vote in~~
24 ~~an election authorized by this section and who is unable to work~~
25 ~~the alternative schedule hours established as the result of that~~
26 ~~election. An employer shall be permitted to provide a work~~
27 ~~schedule not to exceed eight hours in a workday to accommodate~~
28 ~~any employee who was hired after the date of the election and who~~
29 ~~is unable to work the alternative schedule established as the result~~
30 ~~of that election. An employer shall explore any available reasonable~~
31 ~~alternative means of accommodating the religious belief or~~
32 ~~observance of an affected employee that conflicts with an adopted~~
33 ~~alternative workweek schedule, in the manner provided by~~
34 ~~subdivision (j) of Section 12940 of the Government Code.~~

35 ~~(e) The results of any election conducted pursuant to this section~~
36 ~~shall be reported by an employer to the Division of Labor Standards~~
37 ~~Enforcement within 30 days after the results are final.~~

38 ~~(f) Any type of alternative workweek schedule that is authorized~~
39 ~~by this code and that was in effect on January 1, 2000, may be~~
40 ~~repealed by the affected employees pursuant to this section. Any~~

1 ~~alternative workweek schedule that was adopted pursuant to Wage~~
2 ~~Order Number 1, 4, 5, 7, or 9 of the Industrial Welfare Commission~~
3 ~~is null and void, except for an alternative workweek providing for~~
4 ~~a regular schedule of no more than 10 hours' work in a workday~~
5 ~~that was adopted by a two-thirds vote of affected employees in a~~
6 ~~secret ballot election pursuant to wage orders of the Industrial~~
7 ~~Welfare Commission in effect prior to 1998. This subdivision does~~
8 ~~not apply to exemptions authorized pursuant to Section 515.~~

9 ~~(g) Notwithstanding subdivision (f), an alternative workweek~~
10 ~~schedule in the health care industry adopted by a two-thirds vote~~
11 ~~of affected employees in a secret ballot election pursuant to Wage~~
12 ~~Order Numbers 4 and 5 in effect prior to 1998 that provided for~~
13 ~~workdays exceeding 10 hours but not exceeding 12 hours in a day~~
14 ~~without the payment of overtime compensation shall be valid until~~
15 ~~July 1, 2000. An employer in the health care industry shall make~~
16 ~~a reasonable effort to accommodate any employee in the health~~
17 ~~care industry who is unable to work the alternative schedule~~
18 ~~established as the result of a valid election held in accordance with~~
19 ~~provisions of Wage Order Number 4 or 5 that were in effect prior~~
20 ~~to 1998.~~

21 ~~(h) Notwithstanding subdivision (f), if an employee is~~
22 ~~voluntarily working an alternative workweek schedule providing~~
23 ~~for a regular work schedule of not more than 10 hours' work in a~~
24 ~~workday as of July 1, 1999, an employee may continue to work~~
25 ~~that alternative workweek schedule without the entitlement of the~~
26 ~~payment of daily overtime compensation for the hours provided~~
27 ~~in that schedule if the employer approves a written request of the~~
28 ~~employee to work that schedule.~~

29 ~~(i) For purposes of this section, "work unit" includes a division,~~
30 ~~a department, a job classification, a shift, a separate physical~~
31 ~~location, or a recognized subdivision thereof. A work unit may~~
32 ~~consist of an individual employee as long as the criteria for an~~
33 ~~identifiable work unit in this section are met.~~